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Paper No. 9

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JUL -2 2003

In re Application of	:	
Hiroiyuki Nitta et al.	:	DECISION ON PETITION
Application No. 09/883,210	:	
Filed: June 19, 2001	:	
Attorney Docket No. 01701.00086	:	

This is a decision on the petition filed January 30, 2003, requesting that the holding of abandonment in the above-identified application be withdrawn, or in the alternative, to revive the application under 37 C.F.R. 1.137(b)¹.

The petition to withdraw the holding of abandonment is DENIED.

A restriction requirement and an election of species requirement were mailed February 7, 2002, setting a one-month shortened statutory period for filing a response. On March 5, 2002, applicant responded to the restriction requirement, but failed to elect a species for examination purposes. The March 5, 2002 response was held non-responsive and another Office action was mailed March 22, 2002, setting a one month shorten statutory period for filing a response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed January 17, 2003.

Petitioner asserts that a response was timely filed by facsimile transmission on April 19, 2002 together with a preliminary amendment. To support the assertion, petitioner submitted 1) a copy of a response entitled "Response to Election Requirement" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated April 19, 2002, 2) a

¹This decision addresses the petition to withdraw the holding of abandonment only. A decision on the petition under 37 C.F.R. § 1.137(b) will be addressed by the Deputy Commissioner for Patent Examination Policy.

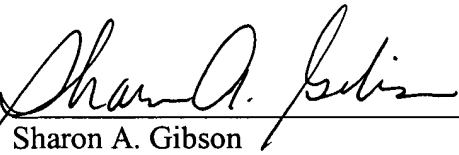
copy of a paper entitled "Amendment" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated April 19, 2002, 3) a copy of the sending unit's report confirming successful transmission of the Amendment on April 19, 2002.

The file record does not include the originally submitted papers.

A review of the record does not show evidence that the election was in fact sent by way of facsimile transmission with a report of successful transmission thereof. The copy of the sending unit's report confirming successful transmission of the Amendment on April 19, 2002 does not support timely facsimile transmission of the "Response to Election Requirement." Further, the sending unit's report shows transmission of three pages, not enough pages to support sending of the election also.

The petition does not satisfy the conditions for accepting a response filed using a certificate of transmission under 37 C.F.R. § 1.8(a) but lost after being received by the USPTO. Accordingly, the petition is denied.

The application filed is being forwarded to the Deputy Commissioner for Patent Examination Policy, Office of Petitions, for consideration of the Petition to Revive Unintentional.



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